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Quid Novi

VOL. VIII NO.1 MCGILL UNIVERSITY FACULTY OF LAW
UNIVERSITE MCGILL FACULTE DE DROIT September 16, 1987

First Years Welcomed by Dean

As in past years the Quid has reproduced below the Dean's address to the current crop of first year students. Hope you enjoy it as much as we did!

May I begin by sincerely welcoming, on behalf of my colleagues and the administrative staff, each one of you to the Faculty of Law of McGill University.

I feel, having written to you several times this summer, that I already know you well. I do look forward to meeting you personally over the next few weeks.

Futurs avocats et avocates, permettez-moi au nom de tous mes collègues et de tout le personnel d'administration, de vous accueillir à la Faculté de droit de l'Université McGill.

Cette faculté de droit que vous avez choisie et qui vous a choisi, fut la première au Canada. Ses origines remontent à 1848 et elle compte plusieurs éminents juristes, parmi ses quelques trois mille diplômés.

Our Faculty, now also your Faculty, offers this country's only truly National Programme. For over 135 years it has served the Canadian legal community. Many of the leading figures in Canadian public life have been, and are, McGill graduates. Let me name but four:

Wilfrid Laurier (B.C.L. 1864), first French Canadian prime minister;

Annie Macdonald Langstaff (B.C.L. 1913), the first woman to graduate in law in Québec;

Harry Batshaw (B.C.L. 1924), the first Jew to be appointed to the Superior Court bench in Canada;

Frank R. Scott (B.C.L. 1927), professor, poet and Dean at McGill and Canada's leading constitutional law scholar of all time.

Ces éminents juristes ne sont que quelques uns de nos diplomés distingués: on trouve également deux autres premiers ministres canadiens, sept juges à la Cour suprême du Canada, plusieurs premiers ministres

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In Memory of Kark Claxton

by Jay Josefo

Early last May just after the spring exam period, third year student Kark Claxton was killed in a tragic car accident.

I became acquainted with Kark when we were both in our first year at the law faculty. When you sit next to someone each day and endure class after class together, a friendship will usually develop. Kark, Richard Aronoff, and I became good friends. While friends in school (through the sharing of this surreal experience that is law school) we also became friends outside of 3644 Peel Street.

Numerous shared experiences reveal Kark's good nature. Those who knew him will recall his calm demeanor and his unfailingly good humour. Nothing could ever upset Kark; be it a typically tedious lecture, a paranoid practitioner judging his second year Moot, or a devastatingly tough final exam. Kark responded to all of these challenges by looking at the bright side of the situation (and trying hard to find a bright side when it wasn't obvious to anyone else!), and by laughing. He was truly a "hail fellow, well met" type of person. Such people of abundant optimistic cheer are in fact all too rare. Kark was just such a person.

I remember finishing an exam which all agreed was particularly difficult. Most of us left feeling quite depressed. Yet there was Kark, who doubtless felt as badly about the exam as the rest of us, but nonetheless was trying to tell his peers that the test was really not as bad as it seemed. His optimism and cheer was reassuring to those with whom he spoke.

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ANNOUNCEMENTS

Congratulations are in order for **Martha Montour,** BCL IV National Programme, who has been chosen as the winner of the 1987 Native Law Students - Native Law Centre writing competition. Her paper entitled "Iroquois Women's Rights With Respect to Matrimonial Property on Indian Reserves" is to be published in a future issue of the Canadian Native Law Reporter. Once again, congratulations Martha.

Quid News

- Anyone interested in working on the *Quid Novi* this year is asked to attend our first weekly meeting of the year, to be held on Thursday, September 17, at 1:00 P.M. in the L.S.A. office.

- REMINDER: This year the deadline for submissions to the *Quid* will be 1:00 P.M. Wednesday. Please be advised that this deadline will be enforced - anything submitted after this time will not appear in the upcoming issue, but in the subsequent issue the following week.

ATTENTION: Computer Use in the Library

All students are required to purchase a computer user card at the bookstore in order to have access to the computers in the library. The $10.00 charge is to cover the cost of paper, ribbons and hardware maintenance.

A new procedure has been implemented whereby users will leave their user-card at the circulation desk in return for the computer keyboard. Directions on how to connect the keyboards will be provided. Please follow these carefully as we cannot afford damaged keyboards. Thank you for you co-operation and please treat the keyboards gently.

4 1/2 to share

with 3rd year female law student.
$262.00/month
situated in front of Westmount Park (library, tennis courts, swimming pool)
walking distance to downtown or bus at front door
The apartment is large, bright and has bay windows.

Please call Maria at 488-0570 or 931-3595

To: All students and Faculty members

From: F.H. Buckley

Subject: **Law and Policy Workshop**

With the assistance of the Dean and the help of other colleagues, Prof. Buckley has organized a Law and Policy Workshop (the "Workshop") for the coming academic year.

The format of the Workshop will be different from that of previous years. Speakers have been encouraged to discuss theoretical issues, and have been asked for a draft of their paper at least two weeks in advance of their talk. The paper will be distributed to interested colleagues so as to permit them to discuss the paper more critically. At the Workshop, the paper will ordinarily be presented over a 20 minute period, with 40 minutes of questions to follow.

Unless otherwise announced, the Workshop will take place on alternate Fridays throughout the year at 12:00 noon in Room 101 of 3647 Peel St., with lunch to follow at 1:15.

We hope that this format, which is roughly similar to that found in speakers' programs at good American schools, will assist in attracting first-rate scholars. We should like speakers to feel that presenting a paper at McGill is a valuable exercise in bringing it to a publishable level.

Watch the *Quid* for further information regarding these lecturers.

Notice - Avis

Students' phone directory will soon be published. Please give notice to S.A.O. of any change of address or phone number before Friday, September 18. Thanks.

Le bottin téléphonique des étudiants sera bientôt publié. Veuillez s'il vous plaît aviser le "S.A.O." de tout changement d'adresse ou de numèro de téléphone d'ici le vendredi 18 septembre. Merci.

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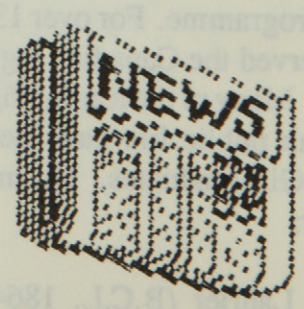

So You Wanna Be a Lawyer?

by Teresa Scassa

O.K. So you stagger out of a debauched undergrad clutching your degree in poli. sci.. You desperately try to make sentences containing the word deconstructionism. People look at you like you're a kid who has just caught the slimiest frog in the pond. "Now what?" they inquire cynically. "Now," you respond with your ace in the hole, "now I'm going to law school."

And before you know it, you're a law student. You stand in the pit clutching your brand new briefcase and wearing your yuppiest outfit. You're convinced there must be some mistake. Almost everyone else is in blue jeans. The student recreation area looks like a squalid basement. The profs are all about as savage as canned fish.

You find solace only in the cafeteria. There, at least, signs of suffering emerge. Those eating the food look appropriately pale and dyspeptic. You squat in your orange chair and wait to feel the irrepressible urge to wantonly rip crucial pages from the dignified legal tomes in the library. The urge doesn't come. It's just as well. You can't remember where the library is. It's all so depressing.

Well, if the real thing is nothing like the law school myths, you can suppress your disappointment. Contrary to popular opinion, suffering is not good for the soul. Suffering, so to speak, is a pain.

Law school myths are created by lawtypes to increase their importance beyond the realm of the otherwise possible. Let's face it, we all like to pretend that law school is an incredibly intense intellectual exercise. There is a certain pleasure in watching the jaws of the unenlightened drop in awe. "Wow," they utter, "law school. You must be really bright." Naturally, you omit to point out the non sequitur.

The shameful truth of it all is that law school is a series of social events strung together by a few classes wherein some jaded pedagogue reads pendantically from the Civil Code. It's a bit like going to a secular church. You balk at having to get up so early for the lectures, doze through them, and afterwards feel absolved enough to party the night away.

Naturally, the myth of rigorous and arduous studies plays a vital role in the life of the average law student. Parents swell with pride at seeing their legalized offspring stagger around blearyeyed and weary with an armful of books. "He studies so hard," they coo in admiration. "I don't know when he finds time to sleep." The truth is, of course, that he parties like a wild animal, sleeps through all his classes and lugs around his books because he's forgotten his locker combination. But it <u>looks</u> good. And it sure beats working for a living.

Really, the only problem with the myth of gruelling legal studies is the havoc it tends to wreak in the lives of first year students. Certainly, the work load can be heavy. But feeling compelled to re-read each case five times is slightly left of moronic. Since most cases are about as deep as a bathtub, efforts at fancy dives will only end down the drain.

The key to surviving law school is balance. Since most law students are a little unbalanced to begin with, this is no easy task. However, to start with, students can try to keep the legal myths

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In Memory of

Kark also enjoyed a good joke! During a tedious lecture he would often whisper a comment that would leave me in convulsions of laughter. While I tried and failed to stop laughing, Kark would sit there with a perfectly straight face. As I would be sitting up front, the Professor and the rest of the class could not fail to notice my outburst.

While Kark maintained a full course load, he also did many things aside from the study of law. For example, he gave piano lessons in his neighbourhood as well as serving as the director of a recreation center in Lasalle.

Kark was a giving person, always willing to discuss a problem and share ideas. Last year, he enthusiastically volunteered to be a tutorial leader for Prof. Cotler's constitutional law class. This giving of his time was one example of his openness towards his fellow students.

From a personal perspective, I have lost a good friend, but with Kark's death, we have all lost a caring individual, an optimistic comrade, an even-tempered man. While his life was far too short, I am thankful that I knew Kark. He had a positive influence on me and on those who knew him. I am sure that we shall always remember him.

In order to help perpetuate Kark's memory, a prize-fund has been established. A student who attains the highest overall average in three years of study will be awarded the Kark Claxton prize. Your help is needed to establish a meaningful monetary award. To honour the memory of your colleague, please make a donation - <u>in any amount</u> - to this prize fund. You may leave your donation with the Dean's secretary. Even if you did not know Kark, you would be making a donation in memory of a comrade and helping future law students. Your support is very much appreciated.

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First Years Welcomed

provinciaux, nombreux juges aux cours supérieures, ministres de la Couronne, diplomates, hommes d'affaires, professeurs, notaires et avocats.

I am confident that in the year 2087, when the Dean welcomes the incoming class, some of you present in this room today will figure on her list of prominent graduates of McGill's Faculty of Law.

But McGill is not an institution which takes pride only in her well-known alumni and alumnae. Each of our graduates, and each one of you, is an important member of the legal community.

Today you, the National Programme Class of 1991, reflect through your diverse backgrounds and interests the unique character of this Faculty. Four years from now, when you walk across the stage at Convocation, you will join the some 3000 other graduates of the Faculty who have, in a variety of ways, made significant contributions to the law, and to the public it serves.

Let me emphasize, as you embark today upon a legal career, that each one of you will be, in our eyes, an illustrious graduate of our Faculty.

But what does it mean to be a student of the law? What is this endeavour which you have undertaken, and which we, as professors share with you? In brief, what is a legal education at McGill all about?

I take it that you would all agree that the study of law presents the opportunity to learn, and to act. It is both a university discipline and a professional endeavour. In pursuit of this latter objective the Faculty offers two degree streams (the B.C.L. and the LL.B.) within its National Programme.

Graduates of McGill are equipped to exercise their profession in every Canadian jurisdiction. What is more, our curriculum is designed to respond to the needs of those intending to pursue other careers in the public and private sectors, for which legal training is an asset rather than a formal prerequisite.

But it is the opportunity presented by the meeting of two great Western legal traditions, the civil law and the common law, within an environment where two great European cultures - English and French - flourish, which gives the study of law at McGill its special character. The comparative study of institutions, principles and rules in each tradition is a central feature of our academic endeavours. Our century long tradition of teaching in both the English and French languages complements this aspect of McGill's programs.

Des linguistes nous disent qu'on ne comprend vraiment pas sa langue maternelle avant d'en maîtriser une autre. Cela est encore plus vrai des études juridiques. Tout comme l'étude des langues, l'étude du droit se révèle complexe. C'est pour cela que nous avons structuré nos programmes de manière à ce que chaque étudiante ait l'occaision de suivre plusieurs cours de droit privé en droit civil et en common law avant la fin de sa deuxième année de droit.

We take pride in our academic and professional traditions and in the contributions of our graduates to the bar, the bench and the scholarly community. Latterly, we have been especially pleased that the value of McGill's National Programme, and especially our approach to the study of law is appreciated across Canada and in major centres of the United States, Europe and the Far East. Our graduates may be found in large metropolitan law firms from Singapore to New York, from Paris to Vancouver, from Hong Kong to Toronto, from San Francisco to Montreal. They also may

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First Years Welcomed

be found in leading international graduate schools such as Paris, Aix-en-Provence, Oxford, Cambridge, Harvard and Berkeley. In the Supreme Court of Canada, one McGill graduate has served as a law clerk in each of the past eight years, and next year no fewer than five recent graduates will hold clerkships. Of course, there are also McGill graduates practicing law across Canada from Corner Brook, Newfoundland, to Lennoxville, Québec; from Hearst, Ontario to Lethbridge, Alberta; from Kamloops, B.C. to Whitehorse, in the Yukon.

But most importantly, McGill graduates have demonstrated a public service vocation. Be this in their profession, in government or in public interest groups our alumni have made outstanding contributions to this country. It is, in effect, the combination of academic excellence and public service which defines a McGill graduate.

Vous constaterez que nos professeurs nous viennent de plusieurs pays à travers le monde: les États-Unis, la France, la Belgique, la Yougoslavie, les Pays-Bas, la Roumanie, l'Italie, l'Angleterre, la Nouvelle Zelande et l'Australie. Cette vocation internationale se réflète également parmis nos étudiants, en provenance de toutes le provinces canadiennes, et de plusieurs pays étrangers. 1500 autres étudiants ont demandé une place; vous êtes les 144 qui furent acceptés. Vous avez des formations diverses: en sciences, lettres, gestion, génie et musique. Quelques-unes possèdent déjà des maîtrises. Un tiers d'entre vous sont francophones, les autres anglophones; votre classe est constitutée à parts égales de chaque sexe. Quelques autres ont au délà de trentaine. Certain d'entre vous ont tout juste vingt ans.

Mais vous partagez vous avec nous. le corps professoral, le désir d'exceller. Nous croyons que tout le monde s'enrichit au contact d'expériences

Cont'd on p.6

The Old Man and the Mansion

by Ethan Friedman

Two weeks... Just two weeks... Two single statutory weeks.... (So thought the undersigned while contemplating the final "give your reasoned opinion" on a supplemental last month). In just two weeks I will once again make that hunched over determined but self-conscious approach to Old Man Ross's mansion. I'll pass through those familiar gates and traverse the miniature manicured tree island while contemplating the various Gatsbys who've gracefully parked their jalopies outside, no doubt dropping in for a few sherries. With judiciously juvenile paranoia I'll be on the lookout for a certain maroon Volvo station wagon otherwise know as the Dean's batmobile. Before mounting the grizzled salmon coloured steps, I'll reflect upon the passing of summer. The immaculately kept lawn- golf course green - the large tree to the left in full bloom. Only too soon Old Man Ross's Italian gardeners will be raking the leaves, pruning the bushes and retrieving aluminium soda cans and Humpty Dumpty potato chip bags - soiled gifts from thoughtless plebian passers-by stuffed through that imposing but not impenetrable grate guarding the Estate. The sky will have that leaden Autumn Grey look of despair. Jobin and Brierley will be out there blissfully tossing a pigskin back and forth... The doors are now before me. I'll look for the ghost of Vlasic past crouching to feed a squirrel while said rodent roots for nuts and... scampers across the ceiling of the Common Room parlour as the guests peruse the literature amidst the Matisses and Monets. I will finally, in a motion speaking of confidence, grasp that familiar brass door knob, pulling the one on the left. I'll then stupidly try the same method with the right door. Ten minutes later I will finally remember to <u>push</u> the latter aforementioned and somehow manage to perform the same magic diagonally with the second set of doors, lurching through into the lobby. Financial and legal publications will rest haughtily on the radiators. Who knows who will be sniffing in the mail boxes or standing looking so stately on the flowing staircase. In the background I'm sure to meet one of Old Man Ross's loyal staff, a Colombian fellow who helps with the cleaning now and then, Roderigo. We shall talk warmly about his native Antioquia province and catch up on news from Medellin... A sudden surge of elation will envelop me.

I'll rush down into the cellar without looking at the bulletin boards or contemplating the inequities of an extra woman's bathroom. Stepping over pickle barrels, wine racks and kegs of pilsener, I'll waltz over to a darkened corner and brush off the cobwebs of yesteryear. It will be the third September that I'll have successfully snuck into this place and Old Man Ross promised me something real special. You know how the rookies get these dinky lockers about the width of a debit card with a secret compartment above for rubbers and unopened casebooks? Well the Old Man tells me on account of my devoted service, he's giving me a place to store my stuff, and its about the size of a telephone booth. And in fact, given my slight build, I could conceivably step inside and close the door behind - sort of like that wardrobe in the C.S. Lewis books - and end up in an enchanted El Dorado with no hundred percent exams nor bagels with cream cheese wrapped in cellophane... Inside this larger berth I will witness the transformation of what we drones call the Ross snake pit: that great little counter serving vegetarian deep dish pizza with whole wheat crust, curried bean curd, de-caf cappucino and apricot-peach bars while the dude who incidentally makes all from scratch broadcasts amazing Salsa

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First Years Welcomed

diverses et pleinement partagées. Et je suis certain que comme étudiants, vous saurez profiter de l'occasion qui s'offre à vous: travailler avec un groupe de professeurs dont chacun veut lui-même exceller à sa manière - que ce soit dans ses recherches, son mode d'enseignment, ses objectifs pédogogiques ou sa production scientifique.

These last points lead me to consider with you briefly what the law is all about. In the past half century, it has been common to describe the lawyer as a social engineer: as an expert who may be called in to solve any social problem. Yet this image is now somewhat tarnished. For we have discovered, to our dismay, that law cannot make all people healthy, make them love each other, make the poor rich, and end discrimination. Sadly, it seems, that when called in aid of some noble social purpose, the law has far from solving problems often exacerbated them.

In this paradox, I believe, lies a clue to understanding which you have chosen. The law is not merely a tool; nor is the lawyer merely a technician. One might say more correctly, that the various forms of the law comprise a brace of tools; for his part the lawyer is a master craftsman, knowledgeable about and skilled in the use of these tools. Let me pursue this analogy for a moment.

If we were confronted with a particular social problem (say the human equivalent of holding two pieces of wood together) we know that a screw and a screwdriver, a hammer and nails, and glue and clamps are each plausible means for achieving our purpose. Understanding the advantages and disadvantages of each combination allows us to deploy these instruments to optimal advantage.

But we would also understand that the use of each commits us to a relatively fixed course of future conduct. If you have ever glued a cabinet you later have to disassemble quickly, you learn the relative merits and demerits of screws and glue. Our legal instruments are like a carpenter's tools. They are more than mere instruments; they free us to create efficiently, but at the same time they limit our creations.

Laissez-moi pousser la comparaison plus loin. Tout comme le menuisier, nous disposons de plusieurs moyens pour accomplir certaines tâches plus ou moins précises; mais il arrivera que tous les moyens mis à notre disposition ne puissent nous permettre d'atteindre l'objectif que nous nous étions fixé. Un tournevis fait parfaitement l'affaire avec des vis, peut à la rigueur servir de ciseau et même à la limite faire office de marteau. Mais on ne pourra jamais s'en servir pour remplacer un niveau. Les instruments dont se sert l'avocat ou plus généralement le juriste, tout comme les outils du menuisier, sont conçus pour certaines fins et peuvent causer de véritiables ravages lorsque mal utilisés.

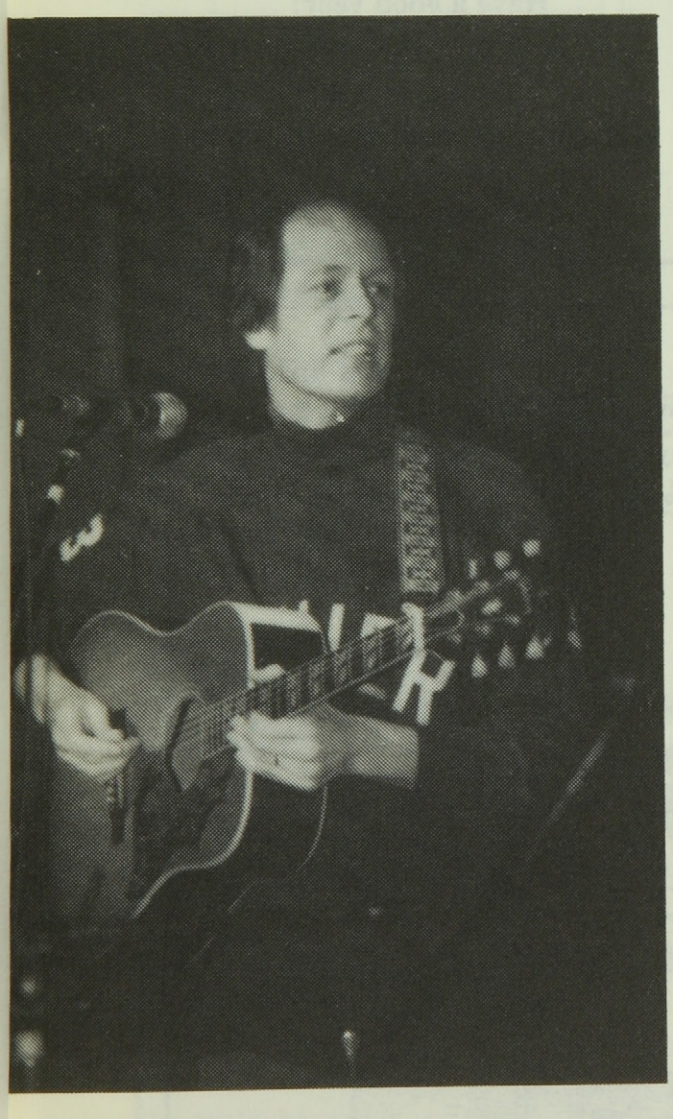
Une part important du travail du juriste consiste à savoir choisir avec discernement les moyens d'intervention les plus adéquats pour résoudre les problèmes qu'on lui soumet. C'est surtout à ce titre qu'on peut tirer grand profit du droit comparé et de l'étude des deux grandes traditions juridiques qui sont les nôtres. Si un jour vous choisissez de pratiquer le droit, vous aurez à traiter avec des clients afin de rédiger des contrats, former des sociétés, arrêter les dispositions d'une convention matrimoniale ou d'un testament, négocier avec des organismes gouvernementaux et représenter des clients devant les tribunaux. Pour réussir dans des tâches aussi diverses, il faudra non seulement que vous vous soyez familiarisés avec les institutions juridiques mais aussi que vous ayez appris à connaître les limites du pouvoir que le droit exerce sur la réalité. Il faut à tout prix savoir s'affranchir, le moment venu, des catégories juridiques qui s'imposent à l'esprit pour reformuler de façon imaginative le problème que l'on est appelé à résoudre. Ce genre de reformulation constitue probablement la forme la plus élevée du travail juridique, à la fois créateur et rigoureux. Il est le fruit d'un apprentissage qui ne connaît pas de fin. Voilà d'ailleurs pourquoi vous vous rangez à compter d'aujourd'hui parmi ce groupe de personnes qui, comme mes collègues et moi, consacrent leur temps à l'étude du droit.

En terminant, j'aimerais vous rappelerque votre formation juridique ne cesse pas le jour où vous quittez la Faculté. Vous allez continuellement vous former. Nous ne prétendons pas, en quatre ans, vous enseigner tout ce qu'il faut savoir. Nous ne pouvons que vour offrir les éléments essentiels pour un processus d'auto-formation future et vous donner le goût de suivre ce processus. Dès aujourd'hui, vous deviendrez un étudiant du droit pour le reste de votre vie, même si vous choisissez plutôt enir un professeur d'exercez la profession comme avocat ou notaire, de devenir un fonctionnaire, ou (comme plusieurs de nos diplômés) d'entrer dans le monde des affaires.

However you choose to employ your legal education, you will find your legal, career, commencing tomorrow, frequently difficult, at times frustrating, occasionally disappointing, but always challenging and rewarding. At its outset, let me, on behalf of all my colleagues, wish you the very best.

First Years Welcomed

"Is this the guy who's been charged with impersonating a police officer?"



by Dean

So You Wanna

at bay. These are designed to serve, not to enslave: "Gee," you murmur to the leering neckless geek who has been wheezing passion in your direction. "I'd love to, but I never go out. You see, I'm in Law School."

The bottom line is perspective. Law school is like the "The Paper Chase" in the same way that going for a swim is like the movie "Jaws". You've got to try pretty hard to be someone's lunch. Of course, there is always mooting. Just when you thought it was safe to go back in the library....

The Old Man

and Tex-Mex polkas on his ghettoblaster... Oh my God that cranky invigilator just scribbled "thirty minutes left" on the blackboard. They say that you can pass a supplemental without necessarily completing all the questions. I've been in rooms 101 and 102 all my life it would appear scribbling ferociously, and I still ask myself, who are those groups of bearded men sporting top hats in those faded black and white photos on the walls adorned?... You know, Old Man Ross once told me that he sometimes takes staff with him on long vacations. I'm wondering if perhaps he had me in mind.

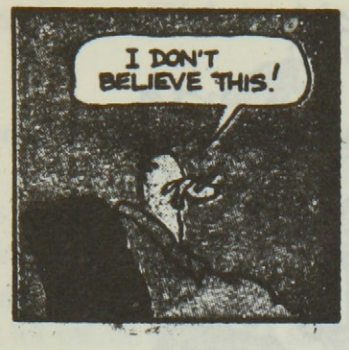
Announcements

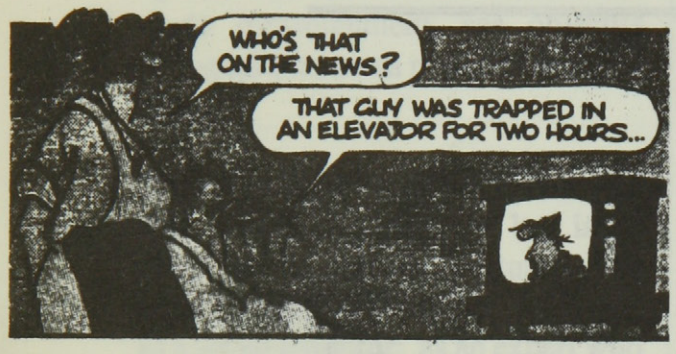
Legal Aid Clinic

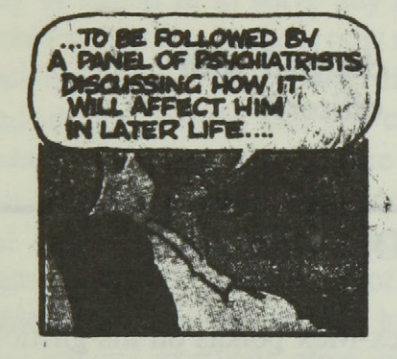
Legal Aid Clinic volunteers, be advised that you can sign up until the end of this week. Applications forms are available at S.A.O.

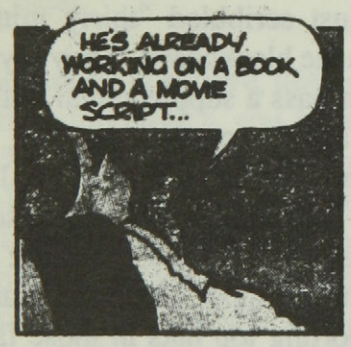
L.S.A. Student Elections

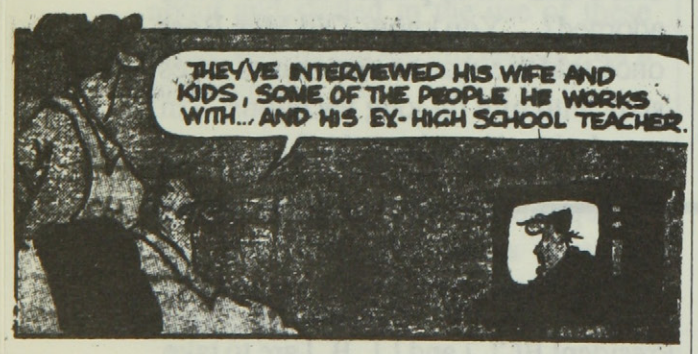
First year students are reminded that elections for the positions of Class President BCL I and LL.B. I are to take place Wednesday, September 23. Balloting will be held between 9:00 a.m. and 4:00 p.m. For additional information, see the L.S.A. bulletin board, opposite the cafeteria entrance in the basement of Old Chancellor Day Hall

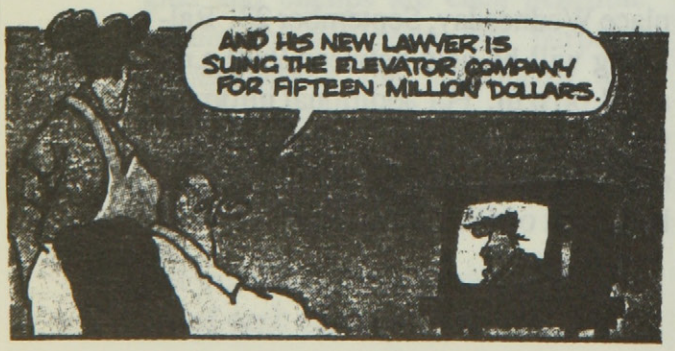












A Message from your LSA Social Coordinator

Hello!

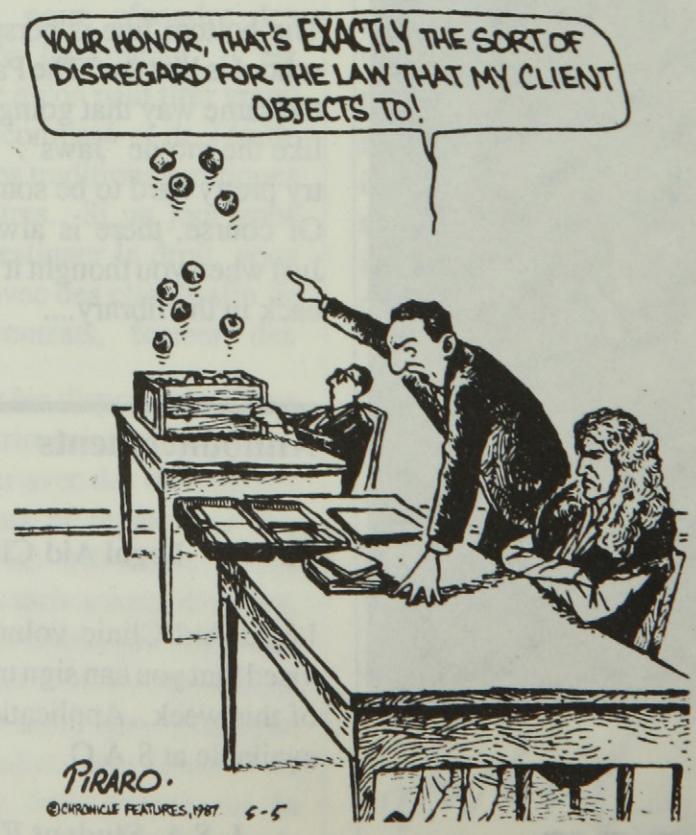
I trust everybody has gotten used to the idea of being back in the halls of Chancellor Day? Hopefully most of you had a good time taking advantage of orientation activities. The Orientation Committee did a great job of ensuring a hectic first few weeks. With luck, the Social Committee will carry on for the rest of the year, bringing you a full and varied social calendar.

While parties will obviously form a part of your future social life, it is our intention to diversify our upcoming events. For those of you not soley interested in drinking yourselves into oblivion, there will hopefully be excursions to museums (*Leonardo, Gold of Thrace...*), opera (*Carmen, Don Giovanni*), musicals (*Cats, Singin'in the Rain*), symphonies (M.S.O., Orchestre de Montréal), sporting events (hockey, baseball - professional and varsity) and tournaments (chess, backgammon, darts, snooker).

Details will be forthcoming. Right now, however, we ask you to consider participating or helping us out at as many future events as possible. Further, your suggestions and criticisms will be of great value in improving the social life here. Our imagination and capacity for slave labour is regretfully finite. So, if for any reason or at any time you wish to talk to me, give me a call at 286-1684 or leave a message in the LSA office.

Have a good year!
Norbert Haensel

BIZARRO/By Piraro



Newton vs. Golden Delicious